



S.A(MD)No.60 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 30.08.2023

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A(MD)No.60 of 2012

and

CMP(MD)Nos.5352 of 2019 and 5368 of 2022

1.Edvin Rajan

2.Daisy Mary

... Appellants

-VS-

1.Duraisamy

2.Rajakumari

3.Soosai Nadar @ Soosai Marian (died)

4.Rosammal

5.Maria Micheal

6.Maria Pushpham

7.Pauthurai

8.Helan Joy

9.Arul Kumar

10.Arul Sobin

11.Xavier Venancious

12.Amala Rani

13.Micheal Ammal

(R13 was brought on record as LR's of the
deceased third respondent vide order dated 06.08.2018
made in CMP(MD)No.3590 of 2018)

... Respondents



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PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 28.10.2011 made in A.S.No.29 of 2011 on the file of the Sub Court, Padmanabhapuram reversing the Judgment and Decree dated 30.11.2010 made in O.S.No.61 of 2007 on the file of the Additional District Munsif Court, Eraniel.

For Appellants ... Mr.AR.Jeya Rhuthran

For Respondents ... Mr.George Raja for
M/s Ajmal Associates
(for R1, R2 & R4 to R12)

JUDGMENT

The appellants, as the plaintiffs, filed the suit in O.S.No.61 of 2007 on the file of the Additional District Munsif, Eraniel, seeking the relief of permanent prohibitory injunction restraining the respondents/defendants, their men and agents from committing illegal trespass into the plaint schedule property or from interfering with the appellants/plaintiffs' work of manufacturing wooden boxes, doors, windows and furniture in any manner. After trial, the said suit was decreed. Challenging the said Judgment and Decree, the respondents/defendants filed the appeal in A.S.No.29 of 2011 on the file of the Sub Judge, Padmanabhapuram. After hearing, the first appellate Court allowed the appeal and set aside the Judgment and Decree passed



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by the trial Court. Aggrieved over the same, the appellants/plaintiffs filed the present second appeal before this Court, raising the following substantial questions of law:

“(a) Whether the lower appellate Court is correct in law in reversing the well considered Judgment and Decree of the trial Court without giving any valid and cogent reasons for such a conclusion under Order 41 Rule 31 of C.P.C?

(b) Whether the Lower Appellate Court is right in law in non-suiting the Appellants' case especially when it is not the case of the respondents that they are legally authorized to trespass into the Appellants' suit property and disturb the Appellants' carpentry work on the grounds of noise pollution during the pendency of appeal before the expert body namely, the pollution Control Board under Ex.B.14?

(c) Is not the lower appellate Court right in law in setting aside the Judgment and Decree of the trial Court granting prohibitory injunction restraining the respondents from committed illegal trespass over the suit property? Particularly when the respondents had not denied the plaint averment that they have trespassed into the suit property on 27.03.2007 and threatened to close down the Appellants' carpentry work?



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2. The case of the appellants/plaintiffs is that the plaint schedule property is having an extent of 3.358 cents. The appellants/plaintiffs have derived absolute right of title, possession and enjoyment over it and they constructed two buildings in the suit property. The appellants/plaintiffs have been doing the business of manufacturing hand made wooden boxes and wooden doors in the rear side buildings belonging to them. The respondents/defendants are neighbours, who reside just away from the appellants/plaintiffs' manufacturing Enterprises. While so, the respondents/defendants threatened the appellants/plaintiffs to close down their business. Hence, the appellants/plaintiffs filed the suit for permanent prohibitory injunction as against the respondents/defendants.

3. The case of the respondents/defendants is that the suit is not maintainable either in law or on facts. The appellants/plaintiffs have constructed a Tin shed along with his house and obtained a Door No. 6/23-2, wherein they are doing carpentry works. Though they obtained approval to conduct carpentry work manually, they established a saw mill without prior approval from the appropriate departments. The machineries have been running day and night and spreading smoke and wooden dust in the air causing air pollution and noise pollution. Hence,



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the respondents/defendants and others gave petitions to the District Collector, District Revenue Officer, Revenue Divisional Officer and other Officers. The noise, dust and smoke are causing nuisance. The Tamil Nadu Pollution Control Board, Vellichanthai Panchayat ordered the appellants/plaintiffs to remove the saw mill or to shift the same.

4. The trial Court, considering the pleadings, framed the issues. During trial, on the side of the appellants/plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and 11 documents were marked as Exs.A1 to A11. On the side of the respondents/defendants, seven witnesses were examined as D.W.1 to D.W.7 and 13 documents were marked as Exs.B1 to B-13. Besides, two Court documents were marked as Exs.C1 and C2 and one Advocate Commissioner was examined as C.W.1. Apart from that, three witnesses on the side of the third parties were examined.

5. Considering the above pleadings, oral and documentary evidence, the trial Court decreed the suit. Therefore, the respondents/defendants filed the appeal before the first appellate Court. Since the appeal suit was allowed in favour of the respondents/defendants. The plaintiffs are before this Court.



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6. On 23.08.2023, this case was listed under the caption for 'Notice of Motion'. Since the substantial question of law has not been framed and not admitted, this Court, upon hearing, has formulated the following substantial question of law:

“Whether the Lower Appellate Court is right in law in non-suiting the Appellants' case especially when it is not the case of the respondents that they are legally authorized to trespass into the Appellants' suit property and disturb the Appellants' carpentry work on the grounds of noise pollution during the pendency of appeal before the expert body namely, the pollution Control Board under Ex.B.14?”

7. According to the respondents/defendants, the appellants/plaintiffs without obtaining prior permission, have been carrying on carpentry work and the said Industry is creating noise pollution to the people residing in and around the area. Hence, the respondents/defendants vehemently contended that after getting the prior permission from the appropriate authorities, the appellants/plaintiffs have to run their carpentry work industry, however, they have not to do so. Further, the appellants/plaintiffs have to get the permission from the Panchayat Board, Pollution Control Board, Fire Safety Department for



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running the wood based industry. However, without getting any permission, the appellants/plaintiffs have been running the said mill.

8. On the other hand, the learned counsel for the appellants/plaintiffs submitted that the appellants/plaintiffs have been running the said industry after getting all the permissions from the concerned authorities. Since the respondents/defendants had made disturbance frequently to the business of the appellants/plaintiffs, they filed the suit. He would further submit that the first appellate Court ought to have held that the competent authority alone can take a decision with regard to the alleged noise pollution and the private party has no right to interfere with the carpentry work of the appellants/plaintiffs.

9. Heard the learned counsel for the appellants/plaintiffs and the learned counsel appearing for the respondents/defendants and perused the materials available on record.

10. The grievance of the appellants/plaintiffs is that the respondents/defendants have disturbed their business and the grievance of the respondents/defendants is that the appellants/plaintiffs have been



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running the business without obtaining the prior permission. Due to the above activity, spreading smoke and wooden dust in the air causing air pollution and noise pollution. Though the trial Court decreed the suit, the first appellate Court set aside the same and came to the conclusion that only after obtaining permission from the appropriate authorities, the appellants/plaintiffs can carry out the business.

11. Now, the issue is whether the respondents/defendants can enter into the premises of the appellants/plaintiffs and seek for the license and other permissions and whether the respondents/defendants is empowered to stop the business of the appellants/plaintiffs?. The answer to the said question is 'No'. If there is any nuisance, the respondents/defendants have to approach the authorities concerned and make a complaint and it is for the authorities to take necessary action. It is not the business of the respondents/defendants to enter into the premises and seek for the license, permission, etc. It is only for the authorities. Therefore, without considering all these aspects, the first appellate Court erroneously set aside the Judgment and Decree of the trial Court. Therefore, this Court is of the view that the respondents/defendants have no authority to disturb the business of the appellants/plaintiffs by entering into their premises.



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Hence, the appellants/plaintiffs are entitled to the relief sought for in the
plaint. The respondents/defendants are entitled to explore their remedy
by making complaint before the appropriate authorities, if they intend to
do show that the carpentry works are carried out at the suit schedule
property, in accordance with law. Therefore, in such view of the matter,
the substantial question of law framed by this Court is answered in
favour of the appellants/plaintiffs. Accordingly, the Judgment and
Decree passed by the first appellate Court is liable to be set aside.

12. In the result, this Second Appeal is **allowed** and the Judgment
and Decree passed by the first appellate Court is set aside and the
Judgment and Decree passed by the trial Court is confirmed. No costs.
Consequently, connected miscellaneous petitions are closed.

30.08.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To:

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- 1.The Sub Judge, Padmanabhapuram.
- 2.The Additional District Munsif, Eraniel.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY, J.

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